

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

UNITED STATES OF AMERICA,

No. 19-cr-97 (NEB)

Plaintiff,

v.

LA VANG,

Defendant.

**DEFENDANT’S RESPONSE AND
OPPOSITION TO MOTION FOR
UPWARD VARIANCE**

The Defendant, La Vang, by and through his attorney, hereby submits his response in opposition to the Government’s motion for upward variance. Vang did not object to the advisory guideline range and asks the Court to find that the range recommended in the final PSR is appropriate. Under the guideline calculation, Vang receives an increase of 4 levels for adjustments to the base offense level. These adjustments are based on 1) the victim was vulnerable, and 2) Vang abused his position of trust or otherwise used a special skill to commit the instant offense.

The Government’s position is essentially that the 4 level increase in the guideline calculation is not enough. Vang argues the Court must find the guideline total offense level is unreasonable in order to grant an upward variance. Further, the Court must also find there is some policy disagreement with the amount of increase under the guidelines and determine some other number is more appropriate. There is nothing in the record to suggest the Sentencing Commission abandoned its role or based the particular adjustments found in the guidelines on anything besides empirical research. Vang argues

the 4 level increase for victim related adjustments accomplishes the purpose of federal sentencing. In other words, a guideline sentence in this case is sufficient, but not greater than necessary, to satisfy the factors of §3353 (a). In this circumstance, the guidelines allow for a probationary sentence, which is a possible outcome contemplated by the Commission when fashioning the current guidelines.

Vang respectfully asks the Court to deny the motion for upward variance and consider his sentencing request.

BEITO & LENGELING, P.A.

Date: November 22, 2019

By s/ Robert A. Lengeling

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